IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Civil Writ Petition No. 162 of 2002 (S/B)

Bhuwan Chandra Kandpal …… Petitioner.

Versus

State and others …… Respondents.

Date of decision: 28, October 2004

For the approval of:

Hon'ble Mr. Justice P.C. Pant.

- Whether the order/judgment should be sent the reporters for reporting? (yes)

- Whether the reporters be allowed to see the judgment? (yes)

Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Writ Petition No. 162 of 2002 (S/B)

Bhuwan Chandra Kandpal,
Presently posted at Assistant Teacher in
Government Intermediate College
Haripur Jaman Singh, Haldwani
District-Nainital ……. Petitioners

Versus

1. State of Uttaranchal through Secretary Education
   Uttaranchal
   Dehradun

2. Director of Education (Intermediate & Basic)
   Directorate, Uttaranchal
   Dehradun.

3. Joint Director of Education
   Kumaon Mandal, Nainital…… Respondents

Mr. Kaliash Chandra Tewari, learned Counsel for the petitioner.
Mr. Nanak Chand Gupta, learned Standing Counsel for the State.

Hon'ble Prafulla C. Pant, J.

By means of this writ petition, moved under Article 226 of the Constitution of India, the petitioner has sought writ in the nature of mandamus directing the respondents to treat the services of the petitioner regularized in L.T. grade w.e.f. 01.10.1990. Also, the writ in the nature of certiorari is sought for quashing of order dated 17.01.2003 where by the representation of the petitioner was dismissed by the Addl. Director of Education.

2) Brief facts of the case, as narrated in the writ petition, are that the petitioner was appointed as Assistant Teacher (English)

in L.T. Grade in the pay scale of 1400-2300 on adhoc basis in the Government High School, Raingol, District Almora vide order dated 4th September, 1990 (copy at Annexure-1 to the writ petition) by the Deputy Director of Education, Kumaon Mandal, Nainital. In compliance of said orders, the petitioner joined his duties on 19.09.1990 in the aforesaid place of his posting. Since then the petitioner is continuously working as Assistant Teacher in L.T. Grade and presently posted in Government Intermediate College, Haripur Jamansingh, Haldwani, District Nainital. A Government order dated 21.11.1995 (copy Annexure-2 to the writ petition) was issued by the state of Uttar Pradesh directing regularizing services of the adhoc Assistant Teachers in L.T. Grade, appointed prior to 01.10.1990. It is also clarified in said Government Order that the date of regularization is 1st October 1990. A seniority list was also required to be made in compliance of the said Government Order on 21.11.1995. The respondent No. 3 issued Order that of regularization of petitioner on the post of Assistant Teacher, L.T. Grade on 31.12.1999 (copy Annexure-3 to the writ petition). However, the respondent did not prepare the seniority list as required under the G.O. One Pooran Singh Bhandari who was promoted on adhoc basis in L.T. Grade in the year 1991 has been given adhoc promotion on 25.11.1998 to the post of a lecturer. A true copy of the order dated 13.11.1991 showing adhoc promotion in L.T. Grade of Shri Pooran Singh Bhandari has annexed as Annexure-5 to the writ petition. the seniority list of L.T. Grade appointees issued by the respondents on 18.09.2001 does not show the name of the petitioner in the seniority list. The petitioner made a representation for treating his regularization w.e.f. 01.10.1990 and to include his name in he seniority list but the same was rejected vide order dated 17.01.2003 (during the pendency of

this writ petition). As such by amending the writ petition in addition to the mandamus, directing in nature of certiorari was sought to quash the said orders.

3) The respondents have filed a counter affidavit in which it has been admitted that the petitioner was appointed as Assistant Teacher (English) in L.T. Grade vide order dated 04.09.1990. and joined his duties on 19.09.1990. However, it is stated that the appointment of the petitioner was only up to 14.05.1991 and on said date his services came to an end. It is further, stated in the counter affidavit that the petitioner filed the writ petition before Allahabad High Court and obtained a stay order in his favour. It is also admitted in the counter affidavit that on 28.11.1997, petitioner was transferred from Government High School, Raingol, Almora to Government Intermediate College, Haripura Jaman Singh, District Nainital. It is admitted in the counter affidavit that the services of the petitioner were regularized on 31.12.1999. In view of the Government Order No. 3179/15-2-95-27 (40)/93 dated 21.11.1995 it is further stated that since no cut-off date for Assistant Teachers regularization is provided as such seniority matter could not be decided. Lastly, it is stated in the counter affidavit that the petitioner is not entitled to the seniority w.e.f. his initial date of appointment. As to the seniority of Sri Pooran Singh Bhandari, it is stated that he was appointed initially in B.T.C. Grade on 28.02.1981 against substantive post and was later promoted to C.T. Grade on 04.06.1981. It is further stated that he was further promoted on adhoc basis as Assistant Teacher, L.T. Grade on 01.01.1992 and his services were regularized in said Grade vide order dated 27.05.1996 (copy annexure C.A. 3 to the writ petition). The seniority of Shri Pooran Singh Bhandari is defended by the respondents on the basis of U.P.

Government Seniority Service Rules 1991 and Rule 7 of U.P. Government Seniority Service Rules 1991.

4) I heard learned counsel for the parties and perused the affidavit, counter affidavit and rejoinder affidavit along with the annexures annexed thereto.

5) The short question for consideration before this Court is whether, the petitioner was wrongly denied his seniority by not treating his regularization in L.T. Grade w.e.f. 01.10.1990. Further it is to be seen if his representation is wrongly rejected vied order dated 17.01.2003 by the respondents.

6) Admittedly, the petitioner was appointed as Assistant Teacher (English) in L.T. Grade vide order dated 04.09.1990 (copy Annexure-1 to the writ petition). It is also admitted that he joined his duties in pursuance of said orders on 19.09.1990. It is also admitted between parties that in compliance of Government Order dated 21.11.1995 (copy annexure-2 to the writ petition), services of the petitioner were regularized on 31.12.1999. The dispute relates to the fact as to from which date the petitioner's services stood regularized and from which date he is entitled to his seniority. before further discussions, it is pertinent to mention here the relevant paras of the Government Order No. 3179/15-2-95-27 (40)/93 dated 21.11.1995. Para 1 and Para 4 of said Government Orders reads as under:

1) *"उत्तराखण्ड क्षेत्र के सभी ऐसे प्रवक्ता/ एल0 टी0 ग्रेड षिक्षकों को जो राजकीय षिक्षण संस्थाओं में तदर्थ रूप से दिनांक 1 अक्टूबर 90 से पूर्व नियुक्त किये गये है, को एतद्द्वारा विनियमित किया जाता है।.....*

.....

4) इस शासनादेष के तहत विनियमिनीकरण दिनांक 1 अक्टूबर 1990 निर्दिष्ट किये जाने के फलस्वरूप विनियमित किये गये कुल प्रवक्ता/ एल0 टी0 ग्रेड षिक्षकों का विषयवार, जनपदवार विवरण निदेषक, माध्यमिक षिक्षा / अपर षिक्षा

निदेषक (उत्तराखण्ड) द्वारा शासन को यथाषीघ्र उपलब्ध कराया जायेगा एवं एतद्द्वारा विनियमित प्रवक्ता/ एल0 टी0 ग्रेड षिक्षकों की पारस्परिक ज्येष्ठता सूची/ कार्मिक विभाग द्वारा निर्दिष्ट प्रक्रिया के अधीन निर्धारित की जायेगी।''

The above paragraphs of said Government Order leave no doubt as to the fact that the appointees in L.T. Grade on adhoc basis prior to 1st October, 1990 stood regularized w.e.f. October, 1990 and no further orders were needed as issued by the respondents on 31.12.1990 to regularized the services of the petitioner.

7) Learned standing counsel for submitted that the petitioner's services cannot be treated to have been regularized w.e.f. 01.10.1990 as no cut-off date has been given in the Government Order. I see no force in the contention for the reason that the opening sentence of Para 4 starts with the expression- "*इस शासनादेष के तहत विनियमितीकरण दिनांक 1 अक्टूबर 1990 निर्दिष्ट किये जाने के फलस्वरूप''* which makes the intention of the Government Order very clear. As far as regularization of petitioner is concerned his services stood regularized by the Government Order dated 21.11.1995 itself as the last word of Para 1 of said Government Order declare "एतद्द्वारा विनियमित किया जाता है''. That being the position, it cannot be said if the petitioner could have been deprived of his seniority against the person (read Pooran Singh Bhandari) who was admittedly appointed on adhoc basis in L.T. Grade after the year 1991. In the Para 10 of the Counter Affidavit, respondents have admitted that Shri Pooran Singh Bhandari was promoted on adhoc basis as Assistant Teacher in L.T. Grade w.e.f. 01.01.1992. As such giving promotion to him in lecturer grade before considering the case of the petitioner is against all norms of the services law.

8) Though in the counter affidavit a plea has been taken that petitioner's initial appointment stood expired on 14.05.1991 but simultaneously, it has been admitted that under orders of the Allahabad High Court passed in writ petition No. 14794 of 1991, he continued in the service and said writ petition was disposed of with the direction that the petitioner be allowed to continue in service until the duly selected teachers are appointed through the Commission. As such he was in continuous service till regularization of his services.

9) In the circumstances, the petitioner has been continuously serving in the L.T. Grade right from the date 19.09.1990. As such in view of the above discussion, rejection of the petitioner's representation relating to his seniority vide order dated 17.01.2003 is bad in law. Therefore, the writ petition is allowed. The mandamus is issued that the petitioner's services be treated to have been regularized in L.T. Grade w.e.f. 01.10.1990. The order dated 17.01.2003 (copy Annexure CA-5 to the counter affidavit) where by the representation of the petitioner was rejected, is quashed. The petitioner's case for promotion in the lecturer grade shall be considered in the light of the observations given in the body of the judgment considering his due seniority. No order as to costs.

(Prafulla C. Pant, J.)

Dt: October 28, 2004
Sweta